

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Jorge Beltran-Martinez,

vs.

Warden Meeks,

Petitioner,

Respondent.

Civil Action No.: 9:15-4478-BHH

Opinion and Order

Petitioner, Jorge Beltran-Martinez, a federal prisoner who was confined at Williamsburg Federal Correctional Institution and is proceeding *pro se*, brought this action pursuant to 28 U.S.C. § 2241.

This matter is before the Court upon the Magistrate Judge's Report and Recommendation ("Report") (ECF No. 9), which recommends that the § 2241 petition be dismissed *without prejudice* for failure to bring the case into proper form for evaluation and possible service of process.

Pursuant to 28 U.S.C. § 636(b) (1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), the case was assigned to Magistrate Judge Bristow Marchant. The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The Court is charged with making a de novo determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with

instructions. See 28 U.S.C. § 636(b). The Court reviews the Report and Recommendation only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation”) (citation omitted).

On October February 18, 2016, the Magistrate Judge issued a Report recommending that the § 2241 petition be dismissed without prejudice for failure to bring the case into proper form. The Magistrate Judge advised Petitioner of his right to file specific objections to the Report. (ECF No. 9 at 3.) On March 7, 2016, the envelope that was mailed to FCI Williamsburg containing Petitioner's copy of the Report and Recommendation (ECF No. 9) was returned to the Clerk of Court, marked “Return to Sender, Not Deliverable as Addressed, Unable to Forward.” (ECF No. 11.) Petitioner was advised by order filed January 5, 2016, of his responsibility to notify the Court in writing if his address changed and that his case could be dismissed for failing to comply with the Court’s order. (ECF No. 6 at 2.)

After a careful review of the record, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error. Accordingly, the Court adopts and incorporates the Report and Recommendation (ECF No. 6) by reference into this order. It is therefore ORDERED that this action is DISMISSED *without prejudice*.

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

March 11, 2016
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.